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Vice President – Federal Regulatory
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REQUEST FOR CONFIDENTIAL TREATMENT

March 1, 2018

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Request for Access to Form 477 Broadband Data*
WC Docket No. 11-10

Request for Confidential Treatment
Form 477 Fixed Broadband Deployment Data – CenturyLink CLEC Operations
FRNs 0018421941 and 0003723822

Dear Ms. Dortch:

CenturyLink requests confidential treatment under the Commission's rules, including Sections 0.457(d)(2), 0.457(g)(3), and 0.459,¹ for CenturyLink's submission of information on its competitive local exchange carrier (CLEC) fixed broadband deployment included in the December 2017 Form 477. CenturyLink limits this request to its CLEC operations, which includes (1) CenturyLink Communications, LLC, FRN number 0018421941, and (2) Level 3 Communications, LLC, FRN number 0003723822.² Both ultimately are wholly owned subsidiaries of the parent company, CenturyLink, Inc.

CenturyLink believes that both it and the Commission have an interest in protecting competitively sensitive data from public release and that the public interest supports treating non-public, competitive deployment information to protect and promote competition. The

¹ 47 C.F.R. §§ 0.457(d)(2), 0.457(g)(3), and 0.459.

² CenturyLink Communications, LLC and Level 3 Communications, LLC operate as interexchange carriers and CLECs. They are authorized to provide service in all U.S. states and territories.

Commission has routinely recognized that respecting confidentiality of information serves the public interest.³

CenturyLink's information on its CLEC fixed broadband deployment, included in the December 2017 Form 477, is confidential as it is proprietary information that CenturyLink historically has not revealed to the public or its competitors in the normal course of business. For CenturyLink Communications, LLC, the specific information has not previously been publicly released through broadband mapping or other initiatives. For Level 3 Communications, LLC, prior information has previously been filed on Form 477 in public form; however, following the integration of Level 3 Communications, LLC, going forward, updates to the data are subject to CenturyLink's corporate policy of treating CLEC fixed broadband deployment as confidential.⁴

Notably, a key purpose of CenturyLink's acquisition of Level 3 Communications, LLC is to bolster CenturyLink's ability to expand its competitive reach and its network investment outside its traditional ILEC areas. Consequently, going forward, CenturyLink is treating Level 3 Communications, LLC broadband deployment information as confidential, consistent with CenturyLink's long-standing policy for competitively sensitive data.

CenturyLink thus requests that information on its CLEC fixed broadband deployment included in the December 2017 Form 477 be withheld from public inspection under Freedom of Information Act (FOIA) Exemption 4 and Section 0.457(d)(2) of the Commission's rules.⁵

The Commission requires that Form 477 data be submitted electronically through a dedicated interface, and CenturyLink is submitting its information through that system. Form 477 includes information on fixed broadband and voice telephone/interconnected VoIP subscribership that the Commission has long recognized as routinely confidential. By checking a box on Form 477, subscribership data is automatically subject to confidential treatment. However, deployment data is a recent addition to the Form 477 and it is not automatically subject to confidential treatment, even for CLECs.

Accordingly, CenturyLink is submitting its electronic Form 477 filing with a message flag specifying that the relevant portion of its Form 477 submission – that which provides CLEC fixed broadband deployment data – is being submitted subject to this request for confidential treatment under the Commission's rules. That request is filed concurrent with the electronic Form 477 data submission. CenturyLink adopted this approach with the relevant portion of its previous seven Form 477 submissions, after discussions with appropriate Commission staff.

³ See, e.g., *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, 26 FCC Rcd 1594 (2011).

⁴ CenturyLink acknowledges that previously filed Form 477 submissions of Level 3 Communications, LLC are in the public domain. This request does not seek exemption from release of that older data for that carrier.

⁵ 5 U.S.C. § 552(b)(4) and 47 C.F.R. § 0.457(d)(2).

CenturyLink is following the same approach for its December 2017 Form 477 electronic submission, again limited to the fixed broadband deployment data of its CLEC, CenturyLink Communications, LLC.

CLEC fixed broadband deployment data shows where a competitive carrier (including the CLEC affiliates of incumbent local exchange carriers [ILECs]) has network facilities capable of providing services. The extent of a competitor's network provides insights into its ability to bid for particular customer locations, its likely reliance on ILEC or other wholesale facilities, its likely costs of providing service to particular locations, the likely timing of its entry into a given service in a geographic market or adjacent areas, and consequentially its competitive threat to other providers in the area. This is consistently treated as confidential information within the CLEC industry. Further, the Commission itself has routinely treated similar information as confidential – even highly confidential – in other contexts, such as its data collections in the pending Special Access proceeding⁶ and in merger-related dockets.

In support of this request, CenturyLink provides the following information, as required by Sections 0.457(d)(2) and 0.459(b) of the Commission's rules.

1. Information for Which Confidentiality is Requested. CenturyLink requests confidential treatment for its information on CLEC fixed broadband deployment included in the December 2017 Form 477. The Commission's Form 477 requires carriers to provide information on network deployment by CLEC affiliates.⁷ This is data that it does not make publicly available and that it treats as sensitive and commercially confidential as a matter of company policy.
2. Proceeding/Reason for Submission. CenturyLink is submitting the information on CLEC fixed broadband deployment included in the December 2017 Form 477 as it is required by the Commission's Form 477 reporting requirements. Prior to the June 2014 Form 477 filing, this information had not been included within Form 477 reporting requirements.

⁶ See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, DA 14-1327 at ¶ 15 & App. B at 5 (rel. Sept. 15, 2014) (showing that information on ability to serve particular areas and locations is “not routinely made available to the public” and warrants confidential or highly confidential treatment).

⁷ ILECs also are being required for the first time to provide information on network deployment. However, ILECs previously have submitted comparable data to NTIA without needing confidential treatment.

3. Nature of Confidential Information. The information contains commercially sensitive information that appropriately may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in them.” *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978). Additionally, information about customers constitutes commercial information that may be withheld not only under FOIA Exemption 7 but also under FOIA Exemption 4. *See Mobile Relay Associates*, 14 FCC Rcd 1891, 18922-23 (WTB 1999). Additionally, the fact that earlier iterations of the data – that of Level 3 Communications, LLC – had been publicly submitted would not preclude CenturyLink from treating subsequent changes to that data as confidential, when that is consistent with its long-standing company policy.
4. Competitiveness of Market. CLEC fixed broadband deployment information included in the December 2017 Form 477 derives from and relates to CenturyLink’s provision of competitive services and thus “concerns a service subject to competition.” 47 C.F.R. § 0.459(b)(4). Even if some older versions of information may be publicly available, or could be estimated or determined by investigation by third parties, where a company treats its information as confidential for commercial services, updates to the data are appropriately deemed competitively sensitive even if earlier versions of the information may have been allowed into the public domain by a prior company having a different policy.
5. Harm from Disclosure. The information on CLEC fixed broadband deployment included in the December 2017 Form 477 is confidential because its release would likely cause competitive harm to CenturyLink. Competitors are always interested in the extent of a CLEC’s competitive network, the extent of its reliance on other carriers’ facilities, its ability to provision to serve a particular market or a particular customer, the value of its network assets, and similar confidential information about their services. Providing CenturyLink’s competitors and suppliers with access to information on its CLEC network deployment, or changes and expansions to its CLEC network deployment – which is information not otherwise publicly available – could competitively harm CenturyLink. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment. Rather, “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.” *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

6. Measures Taken to Prevent Unauthorized Disclosure. As corporate policy, CenturyLink treats the information on CLEC fixed broadband deployment included in the December 2017 Form 477 as confidential and proprietary, and it does not disclose the information to the general public. CenturyLink maintains this information confidential and compiled the Form 477 data from systems that are secured against public access.
7. Previous Disclosure. CenturyLink Communications, LLC information on CLEC fixed broadband deployment included in the December 2017 Form 477 has not previously been disclosed to the general public. Although Level 3 Communications, LLC had previously filed Form 477 data publicly, following its integration into CenturyLink, Level 3 Communications, LLC is subject to CenturyLink's policies on treatment of confidential information. Under those policies, CenturyLink does not publicly release such information, and the data included within the December 2017 Form 477 has not been previously disclosed.
8. Requested Duration of Nondisclosure. CenturyLink believes that the information on CLEC fixed broadband deployment included in the December 2017 Form 477 would likely always be considered confidential and would likely never become stale in the foreseeable future.

Accordingly, CenturyLink respectfully requests that the Commission withhold from public inspection or public disclosure its submission of Form 477 data for CLEC fixed broadband deployment. Should you need additional information, please contact me.

Respectfully submitted,

/s/ John E. Benedict

cc: By E-mail

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Industry Analysis and Technology Division

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